IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 308 OF 1988.

The Commissioner of Income-Tax. ... Applicant.

V/s.

M/s.Herdillia Chemicals Ltd. ... Respondent.

Parag Vyas for the applicant.

P.Kaka with Balkrishnan S. i/b. Craford Bayley and Co. for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 30th June 2005.

P.C. :

. By this reference under section 256 of the Income-tax Act, 1961 ("Act" for short), the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that a sum of Rs.50,000/- representing certain legal expenses and stamp fees should be treated as an asset for the purposes of computation of capital employed within the meaning of section 80J for the assessment years 1972-73 and 1973-74?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that as it is optional for the assessee to claim extra shift depreciation allowance, the Income-tax Officer could not grant such profits of the assessee?

2. Heard rival parties. Perused reference proceedings.

3. Learned counsel for the respondent-assessee invited our attention to the instructions issued by the Central Board of Direct Taxes, New Delhi dated 27th March, 2000; wherein monetary limit for the department for filing reference to the High Court earlier fixed for Rs.50,000/- came to be revised and fresh instructions are issued by the Board to file reference only in cases where tax effect exceeds Rs.2,00,000/-. Learned counsel for the applicant-revenue could not dispute this fact.

4. This Court in the case of **C.I.T. v. Camco Colour Co.**, (2002) 254 ITR 565 ruled that the above instructions are binding on the department.

5. The above instructions dated 27th March, 2000 reflects the policy decision taken by the Board not to raise questions of law where the tax effect

is less than the amount prescribed in the instructions with a view to reduce litigations before High Courts and Supreme court. The circular is binding on the Revenue. There is no justification to proceed with the decades old references having negligible tax effect.

6. We, thus, do not think it necessary to answer question No.1 referred to this Court pertaining to assessment years 1972-73 and 1973-74. Accordingly, question No.1 stands returned unanswered.

7. Learned counsel for the parties agreed that in view of decision of the Apex Court in the case of **C.I.T. v. John Peter**, (2000) 243 ITR 561, question No.2 has to answered in the affirmative i.e. in favour of the assessee and against the revenue. We answer the question No.2 accordingly.

8. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**